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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re ISIAIAH L., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ISIAIAH L.,

Defendant and Appellant.

A123774

(Alameda County
Super. Ct. No. SJ-08-011148)

Defendant Isaiah L. appeals the juvenile court's jurisdictional and dispositional orders, sustaining allegations that he committed a robbery (Pen. Code, § 211) while using a firearm (Pen. Code, §§ 12022.53, subd. (b), 12022, subd. (a)(1)). He contends the findings against him are not supported by substantial evidence. We disagree, and affirm the judgment.

FACTUAL BACKGROUND

On November 3, 2008, a wardship petition (Welf. & Inst. Code, § 602) was filed alleging that defendant had committed a robbery, and that he had been in possession of ammunition.¹ (Pen. Code, § 12101, subd. (b)(1).) The robbery count included the allegations that he personally used a firearm. The testimony at his contested jurisdictional hearing is described below.

¹ No evidence was presented on the ammunition count, and the court found the charge not true.

A. The Prosecution

On October 30, 2008, at around 5:35 to 5:45 p.m., Fabiana Alvarez-Lopez was walking home along 50th Avenue in the City of Oakland, heading towards Bancroft Avenue. It was just starting to get dark. While she was walking, her husband drove up and asked her if he could drive her home. She declined his offer because she was close to their house and she wanted to walk. After her husband drove past, she noticed defendant and two shorter, younger males walking towards her on the sidewalk. They were all wearing black sweatshirts with their hoods on, and dark pants. She looked at their faces as they approached her. Just after they passed beside her, defendant reached back, grabbed her throat with his left hand, and pointed a gun in his right hand at the right side of her chest. He demanded money. As she hesitated, he pushed his revolver harder against her and pulled back the hammer.² She gave the younger males her wallet. They searched her pockets and removed her keys. They also took the cell phone that she was holding and her purse. She told them to give back her keys and they threw them on the ground and started running down the other side of 50th Avenue towards Bancroft.

Alvarez picked up her keys, ran to her house, and told her husband and son what had happened. They got into their car and started following the robbers as they ran down Bancroft towards 51st Avenue. They saw them turn down 51st towards International Boulevard. The males climbed onto the roof of a garage attached to a house on 51st Avenue. Defendant was saying something in English and appeared to be taunting her. He no longer had the hood on his head, and she could see his hair was pulled back in a pony tail. She was able to see that defendant was the same person who had pointed the gun at her on 50th Avenue. The males were on the roof for about three to four minutes, and then they came down and headed towards 52nd Avenue.

Alvarez and her husband drove up 51st Avenue and made a right on Bancroft. They met a patrol car there and she told the officer what had happened. They drove further, and eventually saw defendant again near 54th Avenue, where he went into a

² Alvarez testified that she knew the gun was a revolver because she had been a police officer in Mexico.

carport. Her husband stopped the car and told defendant to give Alvarez her papers back and there wouldn't be any problem. Defendant swore at them. At this point, his hair was no longer tied in a pony tail and he was wearing a different sweatshirt, a black one that appeared to have a white spider design on it. He took off that sweatshirt, gave it to a man sitting in a nearby car, and put on a black sweatshirt that the man gave him. Alvarez and her husband stayed there for about 10 minutes. During that time, a boy was riding a bicycle around their vehicle. A police officer called her husband's cell phone and told them to come and meet him on Bancroft. When they arrived, she told the officer where defendant was, and the officer left and told them to wait. He called them about 10 minutes later and told her husband that two suspects had been detained and that Alvarez would need to identify them.

A police officer drove her back to the carport at Holland Street near 54th Avenue. The residence associated with this carport belongs to defendant's grandmother. Officers showed two males to her, the second of which was defendant. After defendant pulled his hair back and put on the hood of his sweatshirt, she identified him as the person who pointed the gun at her. The following week, she received a letter with no return address. Included with the letter were two personal identifications that had been taken from her during the robbery.

On October 30, 2008, at approximately 5:30 to 5:45 p.m., Maria Machado was walking to her car, which was parked at the corner of 50th Avenue and Bancroft, facing toward International Boulevard. As she opened the door to the car, she noticed three young males walking towards her along 50th. All three were wearing blue jeans and black hooded sweatshirts with beanies. The one in the middle was taller than the other two. She was able to see their faces as they walked past her. At the jurisdictional hearing, she identified defendant as the taller male.

Machado drove her car forward about three parking spaces and re-parked. As she was walking across to the other side of the street, she noticed the three males running back towards her car. Defendant passed her as she got to the sidewalk. He had the

beanie on his head and the zipper on his sweatshirt was open, revealing that he was wearing a white T-shirt. He was about 15 feet away when he passed her.

Before defendant ran past her, Machado noticed a lady about three houses down the street from her car. The lady was screaming and getting up from the ground. After defendant ran past her, he made a right turn on Bancroft. She did not see where the other two males went. She also did not notice if defendant was carrying anything in his hands. She went to her house and called the police. While she was on the phone, she saw the lady get into a vehicle and drive away.

The police arrived about five minutes later and met with Machado. After about half an hour, they drove her to a location about four to six blocks away at Holland Street and 54th Avenue. While she sat in a police car, the officers brought two males out and asked her if she could identify them. The officers shined spot lights from several police cars on the suspects. One of the two suspects appeared to be 25 to 30 years old and she did not recognize him. The other was defendant. When the officers first showed him to her, his hair was “down” (not in a pony tail), he was not wearing a beanie, and the zipper on the sweatshirt was pulled up. She asked the officer to put the beanie and the hood on. At that point she recognized defendant as the same person who had been running up the street earlier. In particular, with the beanie on she was able to recognize his face by his cheeks. She was 90 percent sure that defendant was the person she had seen running down the street.

At approximately 6:00 p.m. on October 30, 2008, Officer Pheareak Phan was with Officer Thurston in a semimarked patrol vehicle. They received a dispatch that a robbery had occurred on the 1600 block of 50th Avenue. After learning that the victim knew where the perpetrator was, Phan drove to the 5400 block of Holland Street. Defendant and another male were standing under the carport. Phan detained defendant and recovered a black beanie. He noticed there were some french fries on the ground. Other officers detained the second person, identified as Brandon Holmes. Phan helped conduct a field show-up, after which Holmes was released.

B. The Defense

David Kendall, a special education teacher, testified that defendant writes with his left hand.

Defendant's brother, Joshua L., testified that he lives with his grandmother in the front duplex on Holland Street. He stated that defendant arrived there on October 30, 2008, at around 2:30 p.m. Holmes, defendant's cousin, was also there. They stayed around the house and socialized. Defendant took Joshua's bicycle at around 6:00 p.m. to ride to a taco truck to get some french fries. He was wearing a black hooded pull-over sweatshirt with the hood tied over his head.

After defendant left, Joshua walked about two blocks to his mother's house to check on his younger sisters. He was wearing a black hooded sweatshirt with "500 Boys" painted on the front and a large white hand on the back with the number "5" in the middle. As he was walking back to his grandmother's residence, someone was driving a dark green or black jeep on Holland facing towards 55th Avenue. The driver was staring at him. When he walked by, the driver made a U-turn and started following him. The car did not have its headlights on, and Joshua became concerned that he was being targeted for a drive-by shooting. The car followed him home.

Joshua opened the back door on the driver's side of his white Buick that was parked in the carport, took off his sweatshirt and threw it into the car. The male Hispanic who was driving the jeep rolled down his window and told them to give back his things and there would not be any problem. Defendant came back with the fries, still riding Joshua's bicycle. He rode past the jeep, which then drove off. Joshua left his fries on the back of his Buick and walked to a friend's house. When he came back, he saw the police detaining defendant and Holmes. He ran to his mother's house to tell her what had happened.

Holmes testified that he lives with defendant at defendant's mother's house. He stated that defendant told him that he was going to go to school the morning of October 30, 2008. At around 8:30 a.m., Holmes went to Joshua's grandmother's house to visit with Joshua. Defendant arrived there in the afternoon, when he would have finished

school. Later, Holmes gave defendant some money to purchase some french fries for him. Around 6:00 p.m., defendant took Joshua's bicycle and rode to the taco truck. Holmes waited inside the white Buick. About this time, Joshua came over and told him that a Jeep was following him. Joshua took off his sweatshirt and put it in the car. Holmes heard the driver of the Jeep ask for his things back. Defendant came back from 55th Avenue on the bicycle, carrying the french fries. Shortly after defendant arrived, three police cars pulled up. The police detained Holmes and defendant, and placed them in handcuffs.

Defendant testified that he had attended Dewey Academy for about a month prior to October 30, 2008. He stated that he went to school on October 30th and was at school for the whole day. After school, he caught the bus to Vicksburg Avenue and Foothill Boulevard and went to his grandmother's house. He was wearing a black beanie, a black pullover hooded sweatshirt, a white T-shirt, blue jeans, and white shoes. He stayed at the house with his brother and Holmes until he left to get the fries. He rode to the truck on his brother's bicycle. After he received his food, he rode back to the house. The fries were in four paper bags inside a white plastic bag. On the way home, he passed a Jeep that was stopped in the middle of the street. Just as he started eating his fries, the police cars drove up and he was arrested.

C. Prosecution's rebuttal

Hattie Tate, the principal of Dewey Academy, testified that attendance records showed that defendant was not at school on October 30, 2008.

D. The Decision

In concluding defendant should be held accountable for the robbery, the trial court noted that Alvarez had four opportunities to view the perpetrator during and after the robbery. Additionally, Machado had observed the offenders, and both women identified defendant at the field show-up and also at the jurisdictional hearing. The court noted Machado had testified that the perpetrator's hooded sweatshirt had a zipper, whereas it was established that defendant was wearing a pullover sweatshirt when he was arrested. The court also noted that the perpetrator had held the gun with his right hand and that

defendant is left-handed. The court concluded Alvarez had mistaken Joshua for defendant when she was trying to follow the robber, noting that the two brothers are similar in appearance. The court found defendant had attempted to establish an alibi by purchasing the french fries, but that he would still have had the opportunity to commit the crime within the relevant time frame. The court discredited defendant's testimony somewhat, because he had lied about being in school on the day of the offense. The court sustained the robbery allegation and found the two firearm allegations to be true. The maximum term of confinement was set at 15 years.

On January 8, 2009, the juvenile court adjudged appellant a ward and placed him in the Juvenile Justice Center. This appeal followed.

DISCUSSION

Defendant contends the evidence was insufficient to support the finding that he committed the robbery because the two eyewitness identifications were unreliable. He notes that while the juvenile court stated that Alvarez had viewed defendant four times within a short span of time, on two of those occasions the court determined she had actually seen defendant's brother Joshua, and not defendant. He emphasizes that he is left-handed, whereas the perpetrator held the gun in his right hand. He also notes the discrepancy concerning whether the perpetrator wore a pullover or a zippered sweatshirt, and faults the court's hypothesis that he could have committed the crime within the relatively short period between when he left his grandmother's house to go to the taco truck and when he returned with the french fries. Defendant's contentions amount to nothing more than a request that this court reweigh the evidence and reassess the credibility of witnesses.

When asked to decide the sufficiency of evidence, an appellate court reviews the entire record and determines whether there is substantial evidence that could lead a reasonable trier of fact to find the essential elements of the crime beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578; accord, *Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Substantial evidence is that evidence which is "reasonable, credible, and of solid value" (*Johnson, supra*, at p. 578.) An appellate court must "presume

in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Reilly* (1970) 3 Cal.3d 421, 425.) The appellate court does not reweigh the evidence (*People v. Culver* (1973) 10 Cal.3d 542, 548 (*Culver*)), reappraise the credibility of the witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact. (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 367.) This standard applies to juvenile adjudications as well as criminal convictions. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.)

Defendant argues that the witnesses’ identifications of him are suspect. We are not persuaded. Eyewitness identification may be sufficient to establish the defendant’s identity as the criminal offender. (*People v. Boyer* (2006) 38 Cal.4th 412, 480.) Further, “when the circumstances surrounding the identification and its weight are explored at length at trial, where eyewitness identification is believed by the trier of fact, that determination is binding on the reviewing court.” (*In re Gustavo M.* (1989) 214 Cal.App.3d 1485, 1497.) In the present case, we are satisfied the juvenile court fully considered all the surrounding circumstances in evaluating the witnesses’ identifications.

Defendant also cites to cases that recognize eyewitness identifications can be problematic, such as *United States v. Wade* (1967) 388 U.S. 218, 228 [“The vagaries of eyewitness identification are well-known”] and *People v. McDonald* (1984) 37 Cal.3d 351, 368 [problems regarding cross-racial misidentification], as well as to standard jury instructions regarding the factors to be considered in evaluating the reliability of identification testimony (see CALCRIM No. 315). However, the fact-finder in this case was the juvenile court, not a lay jury. Defendant does not persuade us that the court was unaware of the law pertaining to the reliability of eyewitness identifications.³ Further, the testimony of a single witness is sufficient for proof of any fact. (*In re Gustavo M.*, *supra*, 214 Cal.App.3d 1485, 1497.) Once the trial court determined – based on its own observations of the witness, any corroborating circumstances, and its own informed

³ Defendant’s request that we take judicial notice, pursuant to Evidence Code section 452, of another case on appeal before this division involving the same juvenile court judge (Case No. A123040, *In re Q.F.*) is denied.

understanding of the potential shortcomings of eyewitness testimony – that Alvarez’s and Machado’s testimony was sufficiently reliable to support a true finding, the substantial evidence corollary that the testimony of a single witness, let alone two witnesses, is sufficient to support a conviction must be applied, absent extraordinary circumstances. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

No such extraordinary circumstances are present here. The evidence discloses both eyewitnesses had multiple opportunities to view defendant in the moments surrounding the robbery. Alvarez saw the defendant’s face at least twice: during the robbery and while he was on the roof of the garage. Machado saw defendant’s face when walked past her before the robbery and when he ran past her immediately afterwards. Both witnesses were able to make a positive identification of defendant at the field show-up. At the jurisdictional hearing, which occurred less than two months after the offense, both Alvarez and Machado were again able to identify defendant with a very high degree of certainty. That the juvenile court found the eyewitnesses’ testimony to be credible, and gave less weight to defendant’s testimony, was within its prerogative as the trier of fact. Again, this court does not reweigh the evidence or reassess the credibility of witnesses. (*In re Frederick G.*, *supra*, 96 Cal.App.3d 353, 367; *Culver*, *supra*, 10 Cal.3d 542, 548.)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

Dondero, J.

We concur:

Marchiano, P. J.

Margulies, J.